



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond
of Madison Motors

Case No.: TR-00-0013

FINAL DETERMINATION

On February 4, 2000, Centennial Casualty Company (Claimant) filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Madison Motors (Dealer). The claim, along with documents gathered by the Department in its investigation of the claim, was referred to the Division of Hearings and Appeals.

The Administrative Law Judge (ALJ) advised parties that he would issue a preliminary determination in this matter without a hearing and gave them until April 4, 2000, to file any additional documents or information that they wished the ALJ consider. No additional documents were forthcoming. The Administrative Law Judge issued a Preliminary Determination on April 27, 2000. An objection was heard on May 30, 2000 and a hearing was scheduled for August 22, 2000, but the objection was withdrawn on July 26, 2000. Pursuant to Trans. § 140.26(5)(d), WI Admin. Code, the Preliminary Determination is adopted as the final decision of the Department of Transportation.

In accordance with Wis.Stats. § 227.47 and 227.53(1)(c), the PARTIES to this proceeding are certified as follows:

Centennial Casualty Company
2200 Woodcrest Place, Suite 200
Birmingham, AL 35253

Madison Motors
1136 East Washington Avenue
Madison, WI 53703

Capitol Indemnity Corporation
P.O. Box 5900
Madison, WI 53705-0900

FINDINGS OF FACT

1. Madison Motors is a motor vehicle dealer licensed by the Wisconsin Department of Transportation pursuant to Wis.Stats. § 218.01. The Dealer is located at 1136 East Washington Avenue, Madison, Wisconsin, 53703.
2. The Dealer has had a surety bond in place since June 19, 1997 to the present. Bond #LP00587277 has been held with Capitol Indemnity Corporation between June 19, 1999 to June 19, 2000.
3. On February 4, 2000, the Claimant filed a claim against the Dealer's motor vehicle bond. In this bond claim, the Claimant alleges that on October 26, 1999 and November 16, 1999 the Dealer issued three checks with insufficient funds for three vehicles for payment to the Northern Auto Auction in South Beloit, Illinois. The total amount alleged to be owed is \$4,070 – copies of returned checks were offered as evidence. The bond claim states that Northern Auto Auction then tried to obtain payment from the Dealer but was unsuccessful.
4. Northern Auto Auction apparently is a motor vehicle auction dealer located in South Beloit, Illinois and is not licensed under Wis.Stats. § 218.30, 218.305, 218.31, 218.32, and 218.33, the provisions that regulate motor vehicle auction dealers in Wisconsin. If Northern Auto Auction was licensed under Chapter 218, this fact would have been disclosed on the claim document in conformance with Trans. 140.24(1)(h), Wis. Admin. Code.
5. After an unsuccessful attempt to obtain payment, Northern Auto Auction subrogated this obligation through a signed subrogation agreement with the Centennial Casualty Company on January 24, 2000. Northern Auto Auction filed a claim under their Check and Title insurance policy filed with Centennial Casualty Company. Centennial paid Northern Auto Auction's claim and then received subrogation rights.

DISCUSSION

The Claimant has derived whatever rights it has from Northern Auto Auction in South Beloit, Illinois. A party does not gain additional rights through subrogation. Therefore, the standing of Northern Auto Auction is necessarily explored first, as it is the original party in the three transactions in question with the Dealer.

Any Wisconsin motor vehicle auction dealer must be licensed under Wis.Stats. § 218.32 and to describe its license on its claim under Trans. 140.24(1)(h), Wis. Admin. Code. Northern Auto Auction is presumably not licensed as a motor vehicle auction dealer in Wisconsin and, in any case, did not include any license notification on its bond claim. In spite of this failure to be regulated under Chapter 218, the agent of Northern Auto Auction now seeks to benefit from the regulatory framework.

The Wisconsin Legislature sought to regulate motor vehicle auction dealers when it passed sections 218.30, 218.305, 218.31, 218.32, and 218.33 of the Wisconsin Statutes. Then the Department disallowed any dealer licensed under this section from making a bond claim against another dealer when it promulgated Trans. 140.21(2)(a). Bond claims were intended to provide consumers with protection and redress when motor vehicle purchases went awry – therefore other licensees were prohibited from making bond claims. Consumers may be uninformed about the complicated and important purchase of a vehicle, so the Department sought to protect them through Subchapter II of Trans. 140 of the Wisconsin Administrative Code. The Department did not seek this protection for other licensees.

Northern Auto Auction, although a motor vehicle auction dealer that would be required to be licensed in Wisconsin if it were located here, is in Illinois and is not licensed here. It seeks a remedy as if it were a consumer, however. To allow Northern Auto's claim through its agent would require the interpretation of the Legislature's and Department's action as to 1) give a benefit to out-of-state auction dealers by allowing them, unlike Wisconsin auction dealers, to make claims against the motor vehicle bonds of Wisconsin dealers; or, 2) promote unlicensed dealer activity in Wisconsin by rewarding unlicensed dealers with opportunities to make claims against bonded and licensed motor vehicle dealers. This ALJ can find no such intent latent in Chapter 218 or the Department's administrative rules.

More likely, the Legislature and the Department sought to establish a regulatory framework whereby those that entered the system would benefit from its protections. Northern Auto Auction has not entered the Chapter 218 regulatory framework and therefore, is precluded from recovering its lost income through this regulatory framework due to the Dealer's alleged offering of bad checks. This extinguishes the subrogation options that the Claimant seeks.

The Department did note that Trans. 140.21 does not supersede any applicable provision of the state's tort laws under Chapter 893 of the Wisconsin Statutes and does not limit the liability of the licensee in any way. See Note, Trans. 140.21, Wis. Admin. Code. This ALJ does not have the authority to adjudicate Chapter 893 claims.

This alternative venue, outside of the motor vehicle dealer regulatory framework, is a more appropriate place for what is, after all, a case of bounced checks. Bad checks happen in many businesses and are not unique to the motor vehicle business. The motor vehicle dealer regulatory framework unique in Chapter 218 was not created to remedy bad checks. Chapter 893 or criminal law are more appropriate venues for this problem.

CONCLUSIONS OF LAW

1. Northern Auto Auction's claim arose on October 26, 1999 and again on November 16, 1999. The surety bond issued to Madison Motors by Capitol Indemnity Corporation covers a one-year period commencing on June 19, 1999. The claim arose during the period covered by the surety bond.
2. Centennial Casualty Company has entered into a subrogation agreement with Northern Auto Auction on January 24, 2000, and derives its rights to claim reimbursement and

damages from Northern Auto Auction's transactions with Madison Motors on October 26, 1999 and November 16, 1999.

3. Centennial Casualty Company filed a claim against the motor vehicle bond of Madison Motors on February 4, 2000. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to sec. Trans. 140.21(1)(d), Wis. Admin. Code, the claim is timely.
4. The claim is not allowable because Northern Auction Auto is disallowed from making a claim under Trans. 140, Wis. Admin. Code. Northern Auction Auto does not have standing to bring a claim and therefore, Centennial Casualty Company does not derive standing to make a claim.
5. The Division of Hearings and Appeals has authority to issue the following order:

ORDER

The claim filed by Centennial Casualty Company against the motor vehicle dealer bond of Madison Motors is DENIED.

Dated at Madison, Wisconsin on August 22, 2000.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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Madison, Wisconsin 53705
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By: _____
BRIAN K. HAYES
ADMINISTRATIVE LAW JUDGE

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.
2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of secs. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.